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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Preparation for International)
Telecommunication Union World)
Radiocommunication Conferences)

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IC Docket No. 94-31

To: The Commission

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

MOTION TO STRIKE

The Association of American Railroads ("AAR"), by its counsel, hereby moves to strike the "Reply Comments" ("Reply") of Leo One USA Corporation ("Leo One") submitted July 26, 1995, in the above-referenced proceeding. Leo One's "Reply" is procedurally flawed and substantively irrelevant and, therefore, should be rejected by the Commission.

The Leo One July 26 submission is an effort to attack Supplemental Reply Comments that AAR filed on July 14, 1995, in response to Supplemental Comments filed by Leo One on July 6, 1995, seeking use of the 456-459 MHz band for NVNG-MSS. AAR's Supplemental Reply Comments questioned Leo One's unexplained departure from the May 18, 1995, Joint Supplemental Reply ("Joint Filing") it filed with other NVNG-MSS proponents, pointed out several of the flaws which continue to plague sharing studies submitted by the NVNG-MSS proponents, and explained that the railroads depend on channels at 457 MHz for coordination of lead

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locomotives and mid-train locomotives (known as "slave" locomotives) -- channels that are absolutely critical to safe and reliable railroad operations.

I. Background

Leo One's July 26 "Reply" is in reality a reply to a reply. The Commission's Rules prohibit such pleadings absent specific authorization, which is lacking in the present instance. 47 C.F.R. § 1.415. Leo One has already made full use of its ample opportunity to participate in this proceeding. On March 6, 1995, it filed Comments. On April 14, 1995, it filed Reply Comments in which it stated that it would be conducting a study to "identify specific bands capable of supporting NVNG-MSS systems in a shared environment" and referred to joint studies being conducted with other NVNG-MSS proponents.^{1/} On May 18, 1995, it submitted a Joint Filing with other NVNG-MSS proponents in which it did recommend specific bands for sharing, but not the 456-459 MHz band. By contrast, the technical analysis by LINCOM corporation ("LINCOM") contained in Leo One's Supplemental Comments filed on July 6, 1995, did not identify any specific bands for sharing. In the pleading which accompanied the July 6 study, Leo One's counsel proposed the allocation of the 456-459 MHz band for MSS uplinks -- but there was no identification of that band (or any bands) in the July 6 LINCOM technical analysis. Indeed, neither the July 6 nor the May 18 study provided any support for use of

^{1/} Leo One Reply Comments filed on April 14, 1995 at 6.

the 456-459 MHz band. In fact, the May 18 study failed even to mention the 456-459 MHz band, much less identify it as suitable for sharing.

II. Leo One's July 26 Reply Comments Should be Rejected by the Commission

Aside from being procedurally flawed, Leo One's July 26 "Reply" is substantively without merit and should be dismissed by the Commission. Leo One missed the point when it contended that AAR has never provided any "technical analysis" to support its conclusion that sharing is not possible.^{2/} Because Leo One admitted in its study that there would be interference, a "technical analysis" in response is utterly unnecessary. Leo One claimed that interference would be "negligible" because its MSS system would rely on a permissive channel allocation assignment system.^{3/} However, as AAR has pointed out in its prior filings in this proceeding, such an allocation system is inconsistent with the railroads' use of the spectrum.^{4/} The railroads require constant access to clear channels in order to ensure that messages which could avoid a potentially catastrophic accident can be transmitted instantaneously. This need cannot be denied or explained away by arguments based on "technical analysis."

^{2/} Leo One "Reply" filed on July 26, 1995 at 2.

^{3/} LINCOM study contained in Leo One Supplemental Comments filed on July 6, 1995 at 14.

^{4/} AAR Reply Comments filed on April 14, 1995 at 8; AAR Supplemental Reply Comments filed on July 14, 1995 at 4-5.

Indeed, as AAR has consistently explained, Leo One's "technical analysis" is flawed precisely because it does not take into account the nature of the railroads' use of the 457 MHz channels, which was fully explained previously by AAR.

Despite AAR's detailed description of the danger that could result from interference with lead-slave locomotive communications, Leo One argued that AAR "never provide[d] any analysis as to how public safety would be compromised."^{5/} Although AAR believed that the threat of a derailment presented a sufficiently clear example of the threat to public safety, Leo One apparently did not "get it," and continues to be in doubt. To remedy this, AAR offers the following description, spelling out the precise public safety ramifications of such an occurrence:

When the lead locomotive is accelerating to ascend a steep mountain pass or decelerating to safely descend a grade, it will transmit a data telemetry message to the slave locomotive to coordinate speed, acceleration or deceleration, and braking. If such a message is interfered with due to a NVNG-MSS transmission and the slave locomotive consequently does not properly react in response to the message from the lead locomotive (i.e., continues to accelerate when the lead locomotive is decelerating or, conversely, continues to decelerate when the lead locomotive commences to accelerate), the different forces applied to the two separate sections of the train could rip the train apart. The

^{5/} Leo One "Reply" at 2.

resulting derailment would present a grave risk of loss of life and injury to crew and damage to cargo. Because lead-slave locomotive deployment and coordination are used particularly (though not exclusively) for traversing steep mountain passes, a derailment in such a setting could result in locomotives and train cars crashing through fragile mountainside ecosystems. The potential environmental damage from such an incident, not to mention the risk to life, limb and property, is enormous.

It appears that a scenario such as the foregoing does not fit neatly into the format of Leo One's preferred "technical analysis." However, such concerns are ignored only at great peril to the public interest. The "meaningful technical dialogue" in which Leo One proposed to engage^{6/} for the public benefit apparently lacks the vocabulary to address basic issues of public safety. Indeed, Leo One's casual dismissal of such issues causes great concern to those users of the spectrum, such as the railroads, who depend on their communications systems to assure the safety of their employees, their property, and the public.

Finally, Leo One's claim that it anticipated the filing of the LINCOM report in its "May 6, 1995 Reply" is misleading both as to time and as to content.^{7/} First, Leo One did not file a Reply in this proceeding on May 6, 1995. Its April 14 Reply referred to a "further refinement of this study [which] will

^{6/} Id.

^{7/} Id. at 3.

identify specific bands capable of supporting NVNG-MSS systems in a shared environment" and noted Leo One's participation in the studies which would form the basis of the May 18 Joint Filing.^{8/} Not only did the July 6 LINCOM study fail to "identify specific bands" in contrast to the May 18 Joint Filing, but it also failed to explain away the fact that the Joint Filing recommended the 455-456 and 459-460 MHz bands for sharing, thus specifically excluding the 456-459 MHz band now proposed by Leo One.^{9/} AAR's surprise and concern over Leo One's Supplemental Comments is, therefore, well-grounded.

CONCLUSION

Leo One's reliance on its earlier filings to establish an open-ended opportunity to submit last-minute unsolicited requests for additional allocations is inappropriate and should be rejected. If Leo One were unsatisfied with the Commission's Report which proposed a specific allocation for MSS uplinks, the appropriate course of action would have been to file a Petition for Reconsideration on that subject. Moreover, Leo One's elevation of "technical analysis" to the level of sole criterion


^{8/} Leo One Reply Comments filed on April 14, 1995 at 6.

^{9/} Joint Filing submitted on May 18, 1995 at 11.

for allocation decisions ignores, and thereby significantly undervalues, other essential criteria such as common sense and public safety. For the foregoing reasons, AAR respectfully requests the Commission to dismiss Leo One's unauthorized July 26 submission.

Respectfully submitted,

ASSOCIATION OF AMERICAN RAILROADS

By: 
Thomas J. Keller
Sari Zimmerman

VERNER, LIIPFERT, BERNHARD,
McPHERSON AND HAND, CHARTERED
901 15th Street, N.W., Suite 700
Washington, D.C. 20005
(202) 371-6060

Its Attorneys

August 4, 1995

CERTIFICATE OF SERVICE

I, Deirdre Johnson, hereby certify that on this 4th day of August, 1995, copies of the foregoing "Motion to Strike of the Association of American Railroads" was mailed, postage prepaid, to the following:

Commissioner Reed E. Hundt
Federal Communications Commission
1919 M Street, NW -- Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW -- Room 802
Washington, D.C. 20554

Commissioner Andrew D. Barrett
Federal Communications Commission
1919 M Street, NW -- Room 826
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, NW -- Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW -- Room 832
Washington, D.C. 20554

Scott Blake Harris, Esq.
Bureau Chief
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

The Honorable Michael Synar
Ambassador to U.S. Delegation to
WRC-95
U.S. Department of State
EB/CIP/SIO - Room 5820
2201 C Street, N.W.
Washington, D.C. 20520

Thomas Tycz
Division Chief
Satellite & Radio Communication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

Fern J. Jarmulnek, Chief
Satellite Policy Branch
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Fifth Floor
Washington, D.C. 20554

Ms. Kristi Kendall
Satellite Policy Branch
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W., Fifth Floor
Washington, D.C. 20554

Regina Keeney, Esq., Chief
Wireless Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

Ralph A. Haller
Wireless Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Robert McNamara
Wireless Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5322
Washington, D.C. 20554

Cecily Holiday
Deputy Division Chief
Satellite & Radio Communication Division
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

William Luther
Branch Chief
Radiocommunication Policy Branch
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

Thomas Walsh
International Bureau
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

Damon C. Ladson
International Bureau
Federal Communications Commission
2000 M Street, N.W., Room 803
Washington, D.C. 20554

Richard Parlow
National Telecommunications and
Information Administration
U.S. Department of Commerce
14th & Constitution Ave., N.W.
Washington, D.C. 20230

Warren Richards
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

International Transcription Service, Inc.
2100 M Street, N.W.
Suite 150
Washington, D.C. 20037

Peter A. Rohrbach
Julie T. Barton
Kyle Dixon
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Attorneys for GE American
Communications, Inc.

Robert M. Gurss
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., #1100
Washington, D.C. 20006
Attorney for APCO

Jolene M. Molitoris
Administrator
Federal Railroad Administration
U.S. Department of Transportation
400 Seventh St., S.W.
Washington, D.C. 20590

Jeffrey L. Sheldon
General Counsel
UTC
1140 Conn. Ave., NW - Suite 1140
Washington, D.C. 20036

Leslie A. Taylor
Leslie Taylor Associates
6800 Carlynn Court
Bethesda, MD 20817-4302
Attorney for E-SAT, Inc.

Robert A. Mazer
Rosenman & Colin
1300 19th Street, N.W., Suite 200
Washington, D.C. 20036
Attorney for Leo One USA Corp.

Barry Lambergman
Manager, Satellite Regulatory Affairs
Motorola, Inc.
1350 I Street, N.W., Suite 400
Washington, D.C. 20005

Raul R. Rodriguez
Stephen D. Baruch
Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D.C. 20006
Attorneys for Starsys Global Positioning

William R. Lye
President
National Spectrum Managers Association, Inc.
RR 7, Box 87
Fulton, NY 13069

George M. Kizer
Chairman
Fixed Point-to-Point Communications Section
Network Equipment Division of the
Telecommunications Industry Association
2500 Wilson Blvd., Suite 300
Arlington, VA 22201

Robert J. Miller
Jeffrey D. Jacobs
Gardere & Wynne, L.L.P.
1601 Elm Street, Suite 3000
Dallas, TX 75201
Of counsel NSMA and TIA

Albert Halprin, Esq.
Halprin, Temple & Goodman
Suite 650 East Tower
1100 New York Avenue, N.W.
Washington, D.C. 20005
Counsel for ORBCOMM

Henry Goldberg, Esq.
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, D.C. 20036
Counsel for VITA

Philip V. Otero, Esq.
Vice President & General Counsel
GE American Communications, Inc.
Four Research Way
Princeton, New Jersey 08540
Counsel for GE Americom

Albert J. Catalano, Esq.
Ronald J. Jarvis, Esq.
Catalano & Jarvis, P.C.
1101 30th Street, N.W.
Suite 300
Washington, D.C. 20007
Counsel for Final Analysis

Jill Absehouse Stern, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
Counsel for CTA

Leonard R. Raish, Esq.
Fletcher, Heald & Hildreth
1300 N. 17th Street, 11th Floor
Rosslyn, VA 22209

Tom W. Davidson, P.C.
Akin, Gump, Strauss, Hauer &
Feld LLP
1333 New Hampshire Avenue, N.W.
Suite 400
Washington, D.C. 2003336
Counsel for Teledesic Corporation

Gary M. Epstein, Esq.
John P. Janka, Esq.
Mary E. Britton, Esq.
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Hughes Space and
Communications Company and Hughes
Communications Galaxy, Inc.

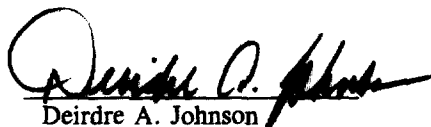
Alan Tilles, Esq.
Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015-2113

Robert L. Hoggarth, Esq.
PCIA
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036

Carl Frank, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Wayne Black, Esq.
Keller & Heckman
1001 G Street, N.W. - Suite 500W
Washington, D.C.

Mark Crosby
ITA
111 N. Glebe Road
Alexandria, VA 22201


Deirdre A. Johnson